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STUDY PROJECT

VOLUME I

A STUDY OF THE ACCOMMODATION OF
RELIGIOUS PRACTICES IN THE UNITED STATES ARMY

BY

CHAPLAIN (COLONEL) RICHARD M. GOELLEN
CHAPLAIN (COLONEL) GAYLORD T. GUNHUS
CHAPLAIN (COLONEL) GAYLORD E. HATLER
CHAPLAIN (COLONEL) JERRY D. REYNOLDS

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A STUDY OF THE ACCOMMODATION OF
RELIGIOUS PRACTICES IN THE UNITED STATES ARMY

A GROUP STUDY PROJECT

by

Chaplain (Colonel) Richard M. Goellen
Chaplain (Colonel) Gaylord T. Gunhus
Chaplain (Colonel) Gaylord E. Hatler
Chaplain (Colonel) Jerry D. Reynolds

Chaplain (Colonel) Timothy C. Tatum
Project Advisor

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A STUDY OF THE ACCOMMODATION OF
RELIGIOUS PRACTICES IN THE UNITED STATES ARMY

CHAPTER I

INTRODUCTION

Since its earliest beginning, the Army recognized the need of the individual soldier to practice religion. But there has often been a conflict between the commander's responsibility to accomplish the mission and the soldier's need for accommodation of religious practice.

Until recently, little guidance was given to the commander on how to handle the peculiar religious needs of individual soldiers. Based on personal understanding or the advice and counsel of a local Army chaplain, the commander was expected to make the decision whether or not to grant permission to the soldier to practice religion. The commander's interpretation of the Army Regulations, personal bias of what is a legitimate religious requirement, the question of the soldier's sincerity, the question of religious freedom, and the military necessity taking precedent over the soldier's constitutional right to practice religion are some of the issues which have made it a complex problem.

BACKGROUND

Laws, policies, and regulations are written to provide for the practice and accommodation of religion of the soldier. Chaplains from a broad spectrum of religious groups are commissioned in the Army. They serve as the commander's

special staff officer to provide for the religious needs of all the soldiers of the command. They provide religious services for their own faith group, coordinate and facilitate the worship for the other faith groups. In addition, they give pastoral care for the needs of all the soldiers of the command. The commander provides facilities for worship, religious education, and counseling that the chaplain conducts for the soldiers and their families in garrison. The chaplain accompanies the soldiers to the field during training or when in combat. Funding for all of this is budgeted as a part of the Command Operating Budget at the local level.

One of the reasons for including the First Amendment to the Constitution of the United States was to assure the right of every citizen the free exercise of religion. It reads: "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." Based on this constitutional right, the Army has always tried to support the religious needs of the soldier. General George Washington supported his soldiers with clergymen during the Revolutionary War. The Second Article of Navy Regulation, written in 1775, directed that "the Commanders of ships in the thirteen United Colonies are to take care that divine services are conducted."¹ At that time religious support meant worship services for for Christians, to include Protestant, Anglican, and Roman Catholic. Not until 1862, were there Jewish Chaplains serving in the United States Army.

Despite this basic foundation for freedom of religious

practice, the Revolutionary War period was not completely free of controversy or conflict over religious practice or conscience. The First Amendment, though very clear, did not make provision for those who opposed war because of religious conscience.² It was through legislative provisions that exemption from military service was granted for conscientious objection. If the Army mobilized today, under the conditions of conscription, the issue of conscientious objection would remain especially troublesome.

Today there is an increasing variety and diversity of religious groups in America. During World War II, just seven denominations (Methodist, Baptist, Presbyterian, Episcopal, Disciples of Christ, Lutheran, and Christian) comprised seventy-seven percent of the Protestant chaplains in the Army. Today, more than one hundred fifty denominations can endorse Army Chaplains. The following examples indicate the rapid growth, in the United States, of six religious groups with nontraditional religious requirements.

	<u>1900</u>	<u>1980</u>
Muslims	10,000	2,688,000
Hindus	1,000	500,000
Buddhists	30,000	180,000
Seventh-Day Adventists	66,547	619,768
Latter-Day Saints (Mormons)	236,316	3,065,460
Jews	1,500,000	7,259,000 ³

Between 1965 and 1970 more than 120 additional religious groups came into being in America.⁴ Moonies, Rajneeshi, Scientologists, and Rastafarians are some of the other religious groups that continue to grow. The Jewish tradition in America includes the Conservative, Orthodox, and Reformed. The Christian includes the Roman Catholic, Eastern Orthodox and Protestant. For Protestants there are at least 87 different denominations with membership greater than 50,000.⁵ Altogether there are over 220 religious groups in America that are recognized by the United Council of Churches in America.⁶ There are unknown numbers of other groups yet to be recognized.

It is reasonable to assume that these diverse religious groups would be proportionally represented in a mobilization that uses conscription. For example, of the 772,000 soldiers currently on active duty, only sixteen percent indicate "no religious preference."⁷ Under the conditions of conscription the Army would draft many people who have avoided the All Volunteer Army because of religious accommodation issues. With the Army being comprised of a cross-section of the populace, the probability is that at least eighty-four percent of all soldiers in the mobilized Army would identify with most of the 220 religious groups. Thus, the Army would need to accommodate, for religious reasons, a higher percentage of soldiers than it does now.

What once seemed to be a simple matter of providing religious support for three major faith groups has now become

a complex matter. Individual religious practices and accommodation requirements are often in tension with military necessity. These religious requirements are expressed through practices of ritual/worship, dress and appearance, diet and medical treatment.

The current Army Regulations allow the local unit commander to make the decision on the soldier's request for exception to policy based on conflicting religious practice. The complexity of religious practices makes it difficult for commanders to deal consistently with various requests for accommodation. A survey of Army Chaplains and former battalion commanders, revealed that an accommodation granted by one commander was denied by another commander under similar circumstances.⁹ It is likely that during mobilization, accompanied by conscription, the number of religious accommodation cases will increase substantially in percentage and number.

Anticipating religious accommodation issues in a wartime mobilization scenario, including a draft, the Office of the Deputy Chief of Staff for Personnel requested that a study on the accommodation of religious practices within the United States Army be conducted.

METHODOLOGY

This study was done recognizing that the need for accommodation will be more acute during mobilization with conscription. It was done by a committee of four Army

Chaplains while students at the United States Army War College. The method involved literature research, research of primary sources that included a Department of Defense study on religious matters, legal precedent on religious accommodation issues, transcripts of interviews with various religious leaders, reviewing public laws, Department of Defense Directives, Army Regulations, Department of the Army Pamphlets, and interviews with Selective Service officials and Department of the Army representatives. In addition, the committee conducted a written survey of senior Army Chaplains, Army Chaplain Assistants, and recent battalion commanders. Analysis of the results of that survey was also used as source material for the study. (See Appendix B for both the survey and the analysis.)

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2. R. R. Russell, "Development of Conscientious Objector Recognition in the United States," in The George Washington Law Review, Vol. 20, pp.409,414-417 (1952).
3. Patrick J Hessian, Ch (MG), Chief of Chaplains, U.S. Army, in a briefing to the Chief of Staff, U.S. Army, 5 July 1984.
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CHAPTER II

LAW, DIRECTIVE, AND REGULATIONS

Although the First Amendment to the Constitution of the United States guarantees the free exercise of religion, soldiers and other servicemembers must depend upon the Congress and military authorities to accommodate their religious practices. Freedom of religion for soldiers can be subjugated to military exigencies while it remains an unrestricted right for other citizens.

The Army has done much to accommodate the religious practices of its soldiers. Ever since General George Washington insisted on chaplains for his troops, the Army has provided for the spiritual dimension of soldiering. The Army successfully defended the chaplaincy in court on the basis that it existed to assist soldiers in the free exercise of religion.¹ Historically, the free exercise of religion by soldiers has been abrogated only by military necessity. The challenge for the Army has been in deciding which religious practices can be accommodated without sacrificing military mission requirements. The changing religious practices of the pluralistic American populace complicate that challenge. The need for mobilization readiness that depends on conscription makes accommodation an even greater challenge.

The Law and the Supreme Court

In Goldman v. Secretary of Defense² the Supreme Court affirmed that military necessities prevailed over the free

exercise of religion by a military member. S. Simcha Goldman was an Orthodox Jew and an ordained rabbi. In 1973, he left the United States Navy Chaplaincy to study psychology in a civilian university. His education was under the Armed Forces Health Professions Scholarship Program with the Air Force. After graduation, Goldman returned to active duty as a commissioned officer and clinical psychologist. He wore the yarmulke, or skullcap, while in uniform performing his duties as a psychologist. However, after wearing it to a court-martial, a trial counsel complained to Goldman's commander who ordered him not to wear it while in uniform because it violated Air Force uniform regulations. When Goldman did not comply, the commander issued a letter of reprimand, withdrew a recommendation supporting Goldman's request for extended active duty, and threatened court-martial. Goldman then sued, claiming violation of his right to the free exercise of religion. Although the United States Court for the District of Columbia³ agreed with Goldman, the United States Circuit Court of Appeals for the District of Columbia⁴ reversed the decision. The United States Supreme Court affirmed the Circuit Court in a 5-4 decision.

In its decision, the Supreme Court relied on two longstanding doctrines of jurisprudence when ruling on military cases. First, the Court continued to recognize the military as a "specialized society separate from civilian."⁵ Under this analysis, the "strict scrutiny"

standard used by the Supreme Court to evaluate restraints on religion in civilian cases did not apply with the same force.⁶ The second doctrine used in the ruling was that great deference be granted to the professional judgment of military authorities concerning the relative importance of military interests. The district court had observed that the Air Force offered no "empirical study, psychological study or the like"⁷ to support its argument for strict adherence to the uniform regulations. Instead, the Air Force based its position on the opinions of military authorities. The majority opinion of the Supreme Court stated that "the desirability of dress regulations in the military is decided by the appropriate military officials and they are under no constitutional mandate to abandon their considered professional judgment."⁸ Thus, the Court concluded the military could restrict free exercise of religion provided military requirements involved were "reasonably and evenhandedly"⁹ administered.

Although Goldman reaffirms the Army's legal right to enforce military necessity over religious requirements of soldiers, the long term assurance of such authority should not be taken for granted, stare decisis notwithstanding. The voting balance of the Court may have changed. Chief Justice Warren Burger and Justice Lewis Powell, who voted with the majority, have both been replaced. Justice Antonin Scalia, appointed when Burger retired, "joined in an opinion sympathetic to servicemembers' free exercise of religious

rights"¹⁰ while on the United States Court of Appeals for the District of Columbia. Justice Anthony Kennedy, who replaced Powell, is considered a conservative and could support the free exercise of religion by soldiers. Further, Goldman has not preempted all judicial review of religion-based challenges to military needs. Although the Court did not prescribe a clear test, it did suggest that military requirements not "reasonably and evenhandedly" administered might be a criteria for judicial review.¹¹ "Five types of religion-based challenges to military practices appear to remain open to serious judicial review: religion-based discrimination (according less accommodation to religious practices than to similar secular practices); compulsory participation in religious activities; violation of regulations involving mandatory religious exemptions; and military requirements that are the subject of professional military judgment."¹²

Justice William Brennan thought the Court, and the military, had denied service members' constitutional rights and wrote in dissent, "we hope that Congress will correct this wrong."¹³ Congress already was making progress toward fulfilling its constitutional responsibility to arbitrate between soldiers' rights and military requirements. While Goldman was in litigation, Congress passed legislation requiring an examination of the issue. Representatives from the Army, Navy, Marines, and Air Force worked several months to produce a comprehensive document known as the Joint Study

on Religious Matters, March 1985. The group recommended the Department of Defense (DoD) issue guidelines concerning the accommodation of religious practices. Congress, in the 1988 defense authorization bill, took a stronger stand and directed that soldiers may wear an item of religious apparel which is neat and conservative and does not interfere with military duties.¹⁴

Department of Defense Directive

The 1988 edition of the Department of Defense Directive¹⁵ updates the one developed in response to Congress and the Joint Study. It does much to perpetuate the "legislative and administrative grace"¹⁶ historically extended to service members. The Directive states, in part, that "it is DoD policy that requests for accommodation of religious practices should be approved by commanders when accommodation will not have an adverse impact on military readiness, unit cohesion, standards, or discipline."¹⁷ Yarmulkes are explicitly permitted to be worn with the uniform unless unique circumstances prohibit. The Secretaries of the Military Departments were directed to supply implementing documents to the Assistant Secretary of Defense.

Army Regulations

The Department of the Army adopted a regulation¹⁸ to implement the Directive. Guidance on accommodating religious practices is embodied in the same Army regulation that

prescribes policy on responsibilities of command, military discipline and conduct, and enlisted aspects of command. The section dealing with accommodation of religious practices is introduced with a moral statement: "The Army places a high value on the rights of its soldiers to observe tenets of their respective religions."¹⁹ However, the paragraph warns that "accommodation of a soldier's religious practices cannot be guaranteed at all times but must depend on military necessity."²⁰

In keeping with the moral statement, the regulation gives specific guidelines. Several offices are charged with educating soldiers on the Army's accommodation policies. Specific considerations are given to ritual/worship, dress and appearance, religious dietary practices, and religious medical practices. (Although neither yarmulkes, nor other religious apparel are named, the wording clearly permits their wear provided they are "neat and conservative.") The regulation establishes a committee under the Deputy Chief of Staff of the Army for Personnel to review accommodation of religious practices and to "approve or disapprove denials by commanders concerning the wear of items of religious apparel by soldiers in uniform."²¹

A soldier can apply to have any religious practice accommodated. The Army published a pamphlet²² to assist in the application process. This document uses essentially the same language as the regulation. Its primary value to the soldier is that it shows how to apply for an exception, to

restrictive rules and includes illustrations of sample requests.

Observations

The Army clearly intends to accommodate as many religious practices of its soldiers as possible. The Supreme Court and the Congress have encouraged the Army in this moral obligation. Only military necessity should detract from meeting that obligation.

ENDNOTES

1. Katcoff v. Marsh, 755 F. 2d 233 (2d Cir. 1985).
2. 106 Supreme Court, 1310 (1986).
3. Employment Practices Decisions, Vol. 29, Para. 32,753, Commerce Clearing House, Inc., Chicago, IL., 26 April 1982.
4. Goldman v. Secretary of Defense, 734 F. 2d 1531 (D.C. Dir. 1984).
5. Goldman v. Weinberger. 475 U.S. 503 p.506 (1986).
6. Sherbert v. Verner, 374 U.S. 398,406 (1963).
7. Employment Practices, Vol. 29 Para 25,540.
8. Goldman v. Weinberger 475 U.S. 503 p.509 (1986).
9. Ibid. p.510.
10. Dwight H. Sullivan, "The Congressional Response to Goldman v. Weinberger", Military Law Review Vol. 121, 1988, p.134.
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12. Thomas R. Folk, "The Military Religion and Judicial Review: The Supreme Court's Decision in Goldman v. Weinberger", The Army Lawyer, November, 1986, p.8.
13. Goldman v. Weinberger, p.524.
14. National Defense Authorization Act for Fiscal Years 1988 and 1989, Codified at 10 U.S.C., 774.
15. U.S. Department of Defense, Department of Defense Directive 1300.17, 3 February 1988, implements this provision.
16. Folk, p.5.
17. DoD Directive 1300.17, p.1.
18. U.S. Department of the Army, Army Regulation 600-20, (hereafter referred to as "AR 600-20").
19. Ibid. p.15.
20. Ibid.

21. Ibid.

22. U.S. Department of the Army, Department of the Army Pamphlet, 600-75, Accommodating Religious Practices, 1 January 1986.

CHAPTER III

RITUAL, DRESS AND APPEARANCE

The free expression of religious beliefs has been important in American culture. The Army, in honoring this, stated in Field Manual (FM) 22-100 Military Leadership (October 1983), "One of the things that makes humans unique is the higher-level needs of the spirit or soul. Leaders must encourage subordinates to realize the importance of these needs."¹ Among those needs, the first to be identified in the FM is "the need for religion."

Since colonial times, the Army has assisted soldiers in the practice of their religion and has made significant efforts to accommodate the religious practices of soldiers. But until recently, little guidance was given commanders on how to handle those needs. Now Army Regulation 600-200 and Department of the Army Pamphlet 600-75 guide commanders in responding to soldiers' religious needs and practices. Furthermore, given the rapidly increasing diverse forms of religious practices among soldiers and the developing face of future battle, the Army has developed a policy and procedure for resolving questions of religious practice as they arise.

In the Army's policy statement, "accommodating" means permitting soldiers to abide by their religious beliefs while serving in the United States Army. The policy further states, "The Army places a high value on the rights of its members to observe the tenets of their religion...Requests for accommodation of religious practices should be approved when

accommodation will not have an adverse impact on military readiness, unit cohesion, standards, health, safety or discipline. However, accommodation of a soldier's religious practices cannot be guaranteed at all times, but must depend on military necessity."²

Under this guidance, the presumption exists in favor of accommodating those practices. The burden rests on the commander to show why the accommodation may not be granted. A problem arises when the soldier's practice actively affects the unit's ability to perform the required mission. Here it is clear that the commander's decision to accommodate or deny a religious practice is based on secular, not religious criteria, i.e., the impact of the practice on combat readiness.

Currently, military commanders are required to consider the following factors, as a minimum, in determining whether or not to grant sincere requests for accommodation of religious practices: 1) the importance of military requirements in terms of individual and unit readiness, discipline, morale, and cohesion; 2) the religious importance of the accommodation to the requestor; 3) the accumulative impact of repeated accommodation of a similar nature; 4) alternative means available to meet the requested accommodation; and 5) previous treatment of the same, or similar requests, including treatment of similar requests made for other than religious reasons.³

Ritual

The religious importance of accommodation to the requestor requires a careful and sensitive appreciation and understanding of the basic meaning of the issue to the soldier. The Joint Service Study states: "Ritual is one of the oldest, most complex, and persistent symbolic activities associated with religion...Rituals are the primary activities a person or community uses to respond in relationship with Ultimate Reality (God). Because rituals are highly symbolic they emerge from the very essence of what it means to be a human being."⁴

Symbols, then, are the essence of ritual, and ritual is one of the cornerstones of religion. These symbols have power and their use empowers the soldier with the ability to be more sensitive of and responsive to the presence of God. In fact, one way to understand religious practices is to think of them as acted symbols. These actions express to God and the world a person's belief.⁵

As just mentioned, one of the basic characteristics of religion is that the believer must somehow respond to God. That response is often expressed in some form of corporate ritual. Corporate ritual/worship requirements normally take the form of designating days of the week as more important, as determined from an interpretation of their scriptures. In addition, faith groups often assign significance to certain seasons and days of the year. Sometimes corporate worship takes only an hour or less and sometimes it may continue for a

day, week, or month. During these worship periods some actions may be required, while others may be forbidden. Because of the requirement of some faith groups that believers not work during a 25-hour Sabbath period (sundown-to-sundown, Friday-Saturday), it has been used as the baseline for evaluating the potential impact of worship requirements on military readiness. The Joint Study Group provided a detailed discussion of the issue in its March 1985 report.* The Army's interest in the issue of religious worship involves two intertwined considerations: first, the effects of accommodating ritual requirements on individual soldier's morale, unit cohesion, esprit de corps; and second, the impact on combat readiness. Currently, work schedules allow the overwhelming majority of soldiers to worship in both garrison and field environments. There are faith groups, however, whose tenets require extended ritual time, e.g., the 25-hour Sabbath period, and who do not have chaplains immediately available. Permitting soldiers time-off for that period and substituting another time would meet their requirements. However, other soldiers would have to pick up their duties. Furthermore, it would have a direct impact on unit cohesion, camaraderie, trust and mutual confidence through interaction as a team. If Army policy guaranteed soldiers time-off for periods up to 25 hours it would reduce the authority of a commander to determine what the unit should do during ritual/worship times.

Those faith groups which do have a lengthy Sabbath

requirement also have provisions which waive the requirement in times of emergency or "life-saving circumstances."

Supposedly times of national emergency would qualify for this exception. Given the current world situation, where combat readiness is of paramount importance for deterrence, even to try to distinguish between routine and emergency situations would be detrimental to military discipline because it would tend to encourage subordinates to question commanders on what constitutes a requirement important enough to require individuals to violate their Sabbath.

The Joint Study Group was "firmly convinced that it would not be in the best interest of the Armed Forces to establish a policy which placed individuals in the status that allowed them to put their religious practices over military requirements."⁷ The Study showed that the practice of a 25-hour Sabbath, except for reasons of health and safety, and the assurance of a day other than Sunday set aside for special corporate, domestic or personal ritual, clearly would be in conflict with military requirements. At the same time, the Study Group believed the worship needs of most service members could be met without detriment to the Services' authority. (Appendix A contains a matrix of selected religious practices of certain groups which may or may not be waiveable by the denominations and which are or are not in conflict with Army policy.)

Dress and Appearance

Uniform and appearance standards are as old as the Army itself. Any old photo of Army units will manifest the variety of uniform appearance or lack of it over the years, to include beards and unshorn hair. However, conflicts between religious tenets and military uniform and appearance standards are of a more recent concern.

During World War I, Congress excused conscientious objectors from combat, but not from military service. Some objectors refused to wear the uniform. The War Department issued an order directing that they (notably Mennonites) "be not forced to wear a uniform, as question of raiment is one of the tenets of their faith."⁶ Later, orders furloughed them into jobs in industry and agriculture.

The next recorded instance of conflict occurred in 1958 over members of the Sikh religion who were drafted into the Army. Sikhs are required to wear unshorn hair, beards, turbans, iron bracelets and carry a small dagger. At that time, the Office of The Deputy Chief of Staff for Personnel allowed Sikhs to meet their tenets; their rationale was the fact that draftees had no choice about being in the Army.

In 1974, the Sikh issue arose again over enlistees. The Judge Advocate General of the Army convinced the Chief of Staff to change the policy. Sikhs were allowed exception on a case by case basis by board action. At that time only one Sikh remained on active duty.⁷ Over the years the policy was reviewed in light of requests from other religions for

exemptions similar to that of the Sikhs and also in light of safety and mission requirements (notably the wearing of protective masks). Based on this review the Army decided that effective August 21, 1981, it would no longer grant exceptions for wear of beards, unshorn hair, turbans and permanent jewelry. This remains current policy.

Except where safety, health and mission accomplishment are involved, the commander must estimate the potential impact of exceptions to standards of dress and appearance based on professional military judgment and experience. The consequences of granting exceptions can be considered within the following framework, provided by the Joint Study Group:

a) The psychological impact of such actions on: 1) the individual to whom the exception is granted; 2) other military members, in the unit and the service; 3) and those outside the military institution. b) The effect on safety and health and the subsequent impact on preparation for and accomplishment of the unit's mission.¹⁰

In terms of military requirements, there are four basic reasons for not allowing religion-based exceptions to uniform and appearance standards. These are: 1) the need in the military to use uniforms and uniform standards of appearance for highly symbolic, and psychological reasons, e.g., to instill discipline, morale, esprit de corps, pride and public image;¹¹ 2) the need to prevent excessive hair and beard length from interfering with the immediate ability to perform the military mission, e.g., beard length making the protective

mask ineffective protection against chemical attack;¹²

3) the need to promote soldiers' safety in the field environment;¹³ 4) the difficulty regarding religion and the current diversity of religions in the United States. (Again, see Appendix A). Obviously, the strength of each reason varies with the particular accommodation requested. At one end of the spectrum, wear of uncut beards and hair involves all four reasons. At the other end, wear of an unobtrusive, religious headcovering indoors, e.g., the yarmulke, implicates only interests in the symbolic use of particular items and in being able to control and manage exceptions.

Taking into consideration the Joint Study Group's framework for consideration of the impact of exceptions to standards of dress and appearance, the Group then considered a variety of ways by which religious dress and appearance requirements could be accommodated.

They concluded that it would be unwise to permit visible exception to uniform dress and appearance standards, except in limited situations. Their reasoning deserves attention. "While uniformity will not, in itself, establish cohesion and military spirit in the absence of other factors, both sociological studies and historical experience clearly indicate it does play a very important role in creating and maintaining the spirit of a military force. The potential negative impact on identification and discipline, on cohesion and esprit de corps, and on the public image of the military services would outweigh the possible benefits to the

individual involved, or to the service, of permitting visible religious expression within the military context."¹⁴ The recommendations of the Joint Study Group ultimately resulted in current Army policy.

Under the current policy, religious symbols not visible on the uniform (worn underneath, such as medallions, prayer beads, medicine bags, temple garments, prayer shawls) may be worn with the uniform, provided they do not interfere with performance of duty or interfere with the proper wearing of any authorized article of wear. Visible items of religious apparel may be worn while in uniform, provided the item is neat and conservative and does not interfere with the performance of the soldier's military duties. A classic example is the yarmulke, which may be worn by Jewish personnel whenever military headgear is not prescribed and also may be worn underneath military headgear, provided it does not interfere with the proper wearing, functioning or appearance of the headgear.¹⁵

In the above context, religious apparel is defined as "articles of clothing worn as part of the observance of the religious faith practiced by the soldier."¹⁶ Hair and grooming practices required or observed by religious groups are not included within the meaning of religious apparel, and are governed by AR 670-1. This regulation prohibits the wearing of unshorn hair and beards because of health and safety reasons, even if based on sincere religious convictions. Any jewelry bearing religious inscriptions, or

indicating some religious affiliation, is governed by the uniform regulation, just as any other jewelry.

A review of medical cases indicates that temporary exceptions to beards and uniform requirements for medical reasons are granted regularly. However, any long term medical profile which prevents a soldier from fulfilling his military duties, or which poses a safety hazard, becomes grounds for administrative reclassification or medical discharge. Although not directly an issue of religious apparel, the wearing of the uniform does affect the religious practice of modesty. Some religious groups require the extremities of the body to be covered in public. For example, the wearing of shorts and T-shirts exposing the arms and legs violates these tenets. The prudent commander will accommodate by allowing long-sleeve shirts and long stockings or sweat pants to be worn in most cases.

Observations

"Accommodating those religious practices which do not impair our ability to perform our mission, which are not detrimental to good order, discipline, and morale; and which promote health, welfare, and safety must be an Army leadership concern. The Army has always acknowledged the importance of soldiers' faith commitment to their survival on the battlefield, and is deeply aware of the importance of faith commitment to soldiers who have become prisoners of war."¹⁷

In light of religious pluralism in the United States

today and the demographic makeup of the American population, large numbers of persons subject to the draft will be forced to decide between practicing their faith or serving in the Armed Forces. Current personal requirements for worship (ritual), and Army requirements for dress and appearance are equally valid for soldiers during peacetime and mobilization. Since the Army trains as it expects to fight, it would be wise to give serious consideration to proactive adjustment of policy to accommodate worship requirements, as well as dress and appearance standards. Then, at mobilization and conscription the Army would be better prepared to accommodate the expanding force and to recommend alternative national service for those whose particular faith requirements cannot be waived by either the individual, or his denomination, or accommodated by the Army.

ENDNOTES

1. U.S. Department of the Army, Army Field Manual 22-100, Military Leadership, p.145.
2. U.S. Department of the Army, Army Regulation 600-20, Para. 5.37b (hereafter referred to as "AR 600-20").
3. U.S. Department of the Army, Department of the Army Pamphlet 600-75, Para 4-2.
4. Joint Service Study on Religious Matters, March 1985, Section II, p.1.
5. "Accommodating Religious Practices", United States Army Chaplain Center and School, p.8.
6. Joint Service Study, Section II, p.4ff.
7. Ibid., Section II. p.11.
8. U.S. War Department Statement Concerning the Treatment of Conscientious Objectors in the Army 17,36. (18 June 1919).
9. U.S. Department of the Army, Army Policy Working Group, Report of Working Group On Army Policy Toward Religion-Based Exceptions to Uniform and Appearance Standards, 6 June 1984. p.3.
10. Joint Service Study, Section II, p.11.
11. Interviews with Drs. John Faris, and Charles Moskos, Jr., done by Joint Study Group, 13 December 1984, and 10 January 1985.
12. Interviews with Mrs. Adolphi and Mr. John Perry, done by Joint Study Group, 17 and 24 January 1985.
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14. Joint Service Study, Section II, p.19.
15. U.S. Department of Defense, Department of Defense Directive 1300.17. 3 February 1988.
16. "AR 600-20", Para. 5-6, (4), (1).
17. Patrick J. Hessian, Ch (MG), Chief of Chaplains, United States Army, in a briefing to the Chief of Staff, United States Army, 5 July 1984.

CHAPTER IV

DIET

The accommodation of dietary religious practices within the United States Army is another area of concern. There are several religious groups that have special dietary requirements. These requirements fall into two categories: 1) food preparation, and 2) food groups.

The Jewish and Muslim faith groups have within them subgroups that have special requirements for the preparation of their food. Those requirements come under the heading, "Kosher." In order for food to be prepared as Kosher, the utensils, cooking containers, and serving dishes must be cleaned in a special manner. Kosher and non-Kosher food can neither be cooked nor served together. To be Kosher, animals must be killed and processed in a special ceremonial way. In order to serve Kosher meat in the dining facility, the supplier of the meat must be certified as Kosher by that religious faith group. That would involve a screening of the vendors and an increase in the cost. All vegetables and fruit can be eaten raw without concern for being Kosher. If they are cooked, the Kosher rules apply.

Additional religious faith groups join these two when we consider the category of "food groups." The General Conference of Seventh-Day Adventists, commonly known as Seventh Day Adventists, and others have a vegetarian diet as a

recommendation of their faith. Many of the individual members experience this recommendation as a requirement which can be met, under most circumstances, in the garrison environment. However, it is very difficult, if not impossible, to follow in the field environment. The longer the field deployment, the more difficult it will be for the soldier to follow the vegetarian regimen.

For those who follow the Kosher laws, there are many meat and fish items that are forbidden. Pork and shellfish are among the most notable on the forbidden list. Only under certain circumstances would it be permissible to eat from the forbidden food groups, i.e., life and death situations. Even in these, some who follow Kosher strictly could be expected to choose not to eat, rather than eat forbidden food.

It was stated earlier that Kosher and non-Kosher food cannot be cooked together. For example, eggs that are cooked in bacon or sausage grease cannot be eaten because the grease from the forbidden source contaminates the rest. Of the field rations, only the "T-rations" are imprinted on the top of the can whether the contents have been cooked in vegetable oil or animal fat. This could tell the soldier who has special dietary religious practices whether or not that particular ration could be eaten. The difficulty is that the top of the can is usually discarded before the soldier is served the meal. Thus, it is impossible for the soldier to know whether vegetable oil or animal fat was used in the preparation. For health reasons, restaurants in the civilian

fast food sector are changing the way they deep fry food. Many of them are now using vegetable oil instead of animal fat. There would seem to be no good reason why the Army could not do the same with its cooking and, in the process, accommodate the dietary religious practices of some of its soldiers.

Many soldiers whose religious faith requires them to follow a restricted diet have been allowed to draw separate rations. They are permitted to bring their special food with them to the field. However, it may be impossible to bring enough food when the time in the field is extended to several weeks or months. In spite of the fact that the Army has done much to accommodate its members who have special dietary requirements, more could be done without jeopardizing military requirements. For example, the French Army has a Kosher field ration in order to accommodate the Muslims from North Africa who serve in their Army. A total of five of their field ration meals contain no pork.¹

Some confusion existed in the past when it came to granting exceptions to soldiers to accommodate their dietary religious practices. Department of Defense Directive Number 1300.17, dated February 3, 1988, clarified much of the confusion. In part it states, "The Military Departments should include religious belief as one factor for consideration when granting separate rations, and permit commanders to authorize individuals to provide their own supplemental food rations in a field or 'at sea' environment

to accommodate their religious beliefs." This policy has both helped and encouraged commanders at the local level to accommodate the religious practices of their soldiers when it comes to the matter of diet.

Until recently, there was a Kosher food source available to some soldiers provided by the Jewish Welfare Board (JWB).² For many years Jewish soldiers took advantage of this Kosher source. Recently, however, the JWB suffered budget cuts and stopped supplying Kosher food to military members. Occasionally money from the Consolidated Chaplains Fund (donations and offering money) on local installations is used to purchase Kosher food for special celebrations such as Passover.

If we experience a partial or full mobilization, the numbers of persons with special dietary requirements will increase. If we return to conscription to support mobilization, those numbers can be expected to increase substantially.

It appears that the Army could easily expand its accommodation of dietary religious practices of soldiers. For many years the Army mess hall (now the dining facility) has been expected to serve at least one fish entree at both the noon and evening meals every Friday. This was an accommodation of dietary religious practice for Roman Catholic soldiers. It appeared that the large numbers of Roman Catholic soldiers of all ranks encouraged the accommodation. If it is right to accommodate dietary religious practice for a

large segment of the Army it is right to accommodate similar practice for a smaller segment. The accommodation of the practice is the issue not how many soldiers this directly affects.

Observations

The Army could do more to develop field rations that would meet the needs of soldiers with religious dietary practices. We could do the same as the French. As far as could be determined, a request for the development of a vegetarian Meal-Ready-to-Eat (MRE) has never been made. Currently, each entree in the MRE has meat and/or animal fat in its contents, with the exception of a tuna meal, which can be considered Kosher.

ENDNOTES

1. Interview with Colonel Gerard Gambiez, International Fellow, United States Army War College Class of 1989, Infantry Officer from the French Army. Carlisle, PA: 3 February 1989.
2. Interview with Ernest D. Lapp, Ch (COL), U.S. Army (ret), of the Jewish Welfare Board. Carlisle, PA: 12 January 1989.

CHAPTER V

MEDICAL

Medical religious practice is yet another category of concern with regard to religious accommodation, and involves both treatment and prophylaxis, or prevention. One group, the Watchtower Bible Society of New York, Incorporated (commonly known as the Jehovah's Witnesses), in their dogma hold up the idea that the body and spirit are inextricably joined. For them, to receive blood transfusions is forbidden because with another person's blood comes their spirit as well. The members of this group do not want their bodies or spirits to be contaminated by another's blood. Members of the Native American Church use a peyote ceremony for healing the body, while members of the American Krishna Movement use normal medical treatment, but prefer herbal or natural treatment (See Appendix A).

Innoculations pose a problem for some religious groups, as well, most notably the Church of Christ Scientist--commonly known as Christian Science. Their theology teaches that God will protect them against disease. In addition, if they contract a disease, or are injured, that same theology assures them that God will heal them.¹ For the most part, the local Army medical officer, in cooperation with the command, has been generous in accommodating these religious practices. Only in the face of preserving life will some physicians

violate the religious convictions of the patient.

Again, if we look toward partial or full mobilization and a return to the conscription process, we can anticipate substantial increases in the numbers of these persons entering the Army. While the percentages will probably increase only slightly, the overall numbers will grow considerably.

Both in our research, and in our survey, it appears that the Army is accommodating the religious practices of its members with regard to those that fall into the medical category. In Department of Defense Directive number 1300.17 the military departments are enjoined to consider religious beliefs as a factor for the issuance of a temporary waiver of immunization, subject to medical risks to the unit and military requirements. Accommodations are being made at the local level with very few exceptions. However, we do believe that some additional steps can be taken to accommodate these practices.

Autopsies are another aspect of medical religious requirements that is sometimes overlooked. The Joint Study Group noted, "The view of the body's sanctity extends to autopsies. Specific requirements may prohibit mutilation for research purposes and generally prohibit autopsies except in special circumstances, e.g., promoting justice." ²

Observations:

The Department of the Army has not issued guidance to the field which outlines the steps that are to be taken to

accommodate the medical religious practices of soldiers. At a minimum that guidance should include the provisions in the Department of Defense Directive which says, "The Military Departments should consider religious beliefs as a factor for waiver of immunizations, subject to medical risks to the unit and military requirements, such as alert status and deployment potential."³

ENDNOTES

1. Interview with Mr. Mason LaSalle and Mr. David Williams done by the Joint Study Group. Washington: 20 December 1984.

2. Joint Service Study on Religious Matters, March 1985, Section V, p.2.

3. U.S. Department of Defense, Department of Defense Directive 1300.17, 3 February 1988.

CHAPTER VI

CONSCIENTIOUS OBJECTORS

The accommodation of those who have conscientious objection to participation in all wars has been developed amidst struggle throughout the history of the United States. Conscientious objection usually has been based on religious teachings, but, since 1971, can be founded on moral or ethical beliefs. Consequently, it is the most developed of accommodations extended to citizens and soldiers.

This development has led the Department of Defense and the Army to use identical definitions. Conscientious objection is "a firm, fixed, or sincere objection to participation in war in any form or the bearing of arms, by reason of religious training or belief."¹ Religious training and belief are further explained: "Belief in an external power or being or deeply held moral ethical belief, to which all else is subordinate or upon which all else is ultimately dependent and which has the power or force to affect moral well-being."²

Like all accommodations, conscientious objection has its legal status in laws from the Congress and not the Constitution, although James Madison wanted to include a provision in the Bill of Rights that would have exempted conscientious objectors from military service.³ When

Congress enacted the first draft during the Civil War, it soon yielded to religious groups, such as Quakers, and exempted from combatant duty people "conscientiously opposed to the bearing of arms, and who are prohibited from doing so by the rules and articles of faith [of their] religious denominations."⁴ Through World Wars I and II conscription was in effect and the Congress and the Army attempted to accommodate conscientious objectors by either exempting them from combatant service or offering them noncombatant duty as military members. Some were offered alternative service to the nation in industry or agriculture.⁵ Despite several appeals by conscientious objectors, "the courts have uniformly continued to reject challenges to compulsory military service based on a theory that there is a free exercise right to conscientious objector status."⁶ Gillette v. United States, 401 U.S. 432 (1971) was the latest Supreme Court case to confirm this principle.

Currently, the military services follow the guidance given in Department of Defense Directive 1300.6 (1971). This allows administrative discharge or reclassification into noncombatant positions for those who become conscientious objectors after becoming service members. For example, soldiers can apply for recognition as Class 1-O and be discharged, or as Class 1-A-O and be reassigned to jobs considered noncombatant, such as health care.

The Selective Service is prepared to deal fairly with conscientious objectors in a conscription.⁷ Although

registration of all eighteen year old males requires only name, two addresses, gender, and social security number, the Selective Service expects significant numbers of applicants for conscientious objector status during a draft. From 1970 through 1973, the last years of conscription for the Vietnam War, about one percent of all Class 1-A, 1-A-O, and 1-O registrants were Class 1-O (conscientious objectors to all military service). In 1972, for example, this was 16,100 men.⁶ Plans call for persons in Class 1-O to be placed in alternative service jobs which contribute to the maintenance of national health, safety, or interest.⁷

The utilization of Class 1-A-O persons is unclear. The Selective Service is prepared to process and supply them to the Department of Defense as part of any conscription. According to a Department of Army action officer, the position of the Department of Defense is that Class 1-A-O inductees will be allocated proportionately among the services. However, the Air Force does not expect to need draftees. The Navy and Marines may refuse to accept any from Class 1-A-O. At present, only the Army plans to take Class 1-A-O inductees. Unfortunately, the percentage of Class 1-A-O persons in potential draftees is unknown.

Observations.

The Army and the United States Congress might do well to take a fresh look at conscientious objection, which can be

based on religion. Therefore, any accommodation, or lack of accommodation, can be an accommodation or denial of a religious practice. Yet, Department of Defense has one directive for the religious practice of conscientious objection and another for all other religious practices. Perhaps, the two can be combined in the future as the accommodation of all religious practices develops. This could promote a consistent accommodation of religious practices. Also, if the Army cannot accommodate the essential practices of a religious group, it could maintain a high moral position by seeking legislation that would provide alternative service for conscripted members using the treatment of conscientious objectors as a model. The nation could gain the service of those citizens and the Army would not trample on their religious practices.

ENDNOTES

1. U.S. Department of Defense, Department of Defense Directive 1300.6, 20 August 1971, p.1; and U.S. Department of the Army, Army Regulation 600-43, 1 September 1983, Glossary p.1.
2. DoD Directive 1300.6, p.2; AR 600-43, Glossary p.2.
3. Joint Service Study on Religious Matters, March 1985. p.11 that refers to Annals of Congress 434 (McGales and Seaton, eds, 1834); R. R. Russell, Development of Conscientious Objector Recognition in the United States, 20 George Washington Law Review, pp. 409, 414-17. (1952).
4. Thomas R. Folk, Military Law Review, Vol. 98 (1982) p.57 quoting Act of February 24, 1864, Chapter 13 Stat. 6.9 (1864).
5. Ibid. pp.57-59.
6. Ibid. p.61.
7. Interviews with William B. Olney, Operations Division, Selective Service, 1023 31st N.W., Washington D.C. October 1988 and January 1989.
8. Unpublished chart supplied by Selective Service, October 1988.
9. United States Congress, Military Selective Service Act, Public Law 50 (50 U.S.C. App. 456).

CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

Before turning to specific conclusions and recommendations, some general observations bear reviewing. First, there is a perceived difference between religious practices as a right and religious practices as a privilege. In our survey, former battalion commanders saw the free exercise of religious practices as a "right" even though the Supreme Court identified it as being subordinate to military necessity. Thus, religious practices must be implemented as "privilege." From the perspective of the former commanders, they were quite willing to extend this "privilege" to their soldiers. With conscription, the numbers of requests for exception because of religious practices will increase because of the changing demographics of our country, i.e., greater religious pluralism. The Army must be prepared to deal with that increase, and one of the ways to do that is to decide now which of the religious practices will be accommodated and which will not. Having decided, we must begin to behave now as we will behave during conscription. This would support a second general issue, that is, we are to train as we expect to fight. In the accommodation of religious practices arena we need to train our officers, our noncommissioned officers, and our soldiers in the practice of religious accommodation. We

need to begin to do it now as we would expect to have to do it in time of war and conscription.

We also discovered a resistance to deviate from stated standards. Many of the former commanders hesitated to grant accommodation of religious practices. This seemed strange, especially in light of their identification of free exercise of religion as a "right" of the soldier. One possible explanation is the dearth of direction from the Department of the Army in this area. They seemed unsure what they could accommodate freely and what they could not. Clearer guidance needs to be given which would eliminate the uncertainty.

Conclusions

1. The Army may restrict religious practices which conflict with military necessities. The Supreme Court confirmed this authority in its ruling on Goldman.

2. The Army does much to accommodate religious practices of its soldiers and their families.

3. Despite the Supreme Court's compelling deference to the judgment of military authority to establish standards necessary to accomplish the military mission, the Army should not use that delegation of power to brutalize unnecessarily the conscience of patriotic, sincere religious soldiers and prospective soldiers, regardless of their number.

4. Accommodation of conscientious objectors historically has been an accommodation of a religious practice.

5. The current thinking and practice of the Army is to

train as we expect to fight. Since current requirements of worship, dress and appearance are equally valid for soldiers during peacetime and mobilization, it would be wise for the Army leadership to be proactive in adjusting policy to accommodate those religious requirements which do not impede performance of mission; which are not detrimental to discipline and morale; and which do not threaten the health and safety of the soldier and unit.

6. Modesty plays an important part for some religious groups, in the clothing they wear. Some require their members to keep both arms and legs covered. Physical training formations sometimes violate this practice. Sleeves rolled-up in hot weather can be a violation also.

7. Accommodation of dietary practices can usually be made without reducing morale, readiness, or unit cohesion. Both religious dietary practices and healthy nutritional practices would be served by reducing, or eliminating, the amount of animal fat in the Army field rations. The Army could encourage dietary religious practices to be considered as justification for providing separate rations.

8. Many immunizations can be waived to accommodate medical religious practices without negatively influencing readiness, morale, or unit cohesion.

9. Religious medical practices need to be considered when treatment, especially surgery, is indicated.

10. Religious medical practices need to be considered when preparing to conduct an autopsy.

Recommendations

1. If the Army cannot accommodate the Sikh with a turban, the Satchidananda Ashram-Integral Yogi with a saffron robe, or the Rastafarian with dreadlocks in peacetime, it must lead the way in pressing Congress to establish alternative service for such religious adherents in a war supported by conscription.

2. Include guidance on conscientious objectors in Army Regulation 600-20, Army Command Policy. This will help bring accommodation of other religious practices into line with accommodation of conscientious objection.

3. Continue to foster a policy of broad accommodation of religious practices, subject to military necessity, through instruction at service schools, development of training schedules that consider religious holidays, and the expansion of food service menus that accommodates religious dietary practices.

4. Grant the free exercise of religious practices unless there is a clear and compelling military necessity to the contrary. This practice would permit the Army to exercise moral ascendancy and avoid identification with intolerance, or any anti-religious stance and could promote the Army as a humane place to serve the country in peace or war.

5. Broaden Army policy to allow unique worship time requirements, e.g., 25 hour Sabbath period, during normal garrison duty (field and combat situations are obvious exceptions).

6. Standard application of the current regulation regarding accommodation should be the norm. A recent survey of former battalion commanders and chaplains showed serious inconsistency in application. Furthermore, application of the regulations is desirable at the local level.

7. The Deputy Chief of Staff for Personnel should take the lead in pressing for legislation whereby those whose religious practices cannot be waived or accommodated by the Army be granted alternative national service on a case by case basis as is currently the case with those claiming conscientious objection.

8. The Army should offer options to the commander concerning the wear of the uniform that would accommodate the religious practice of modesty.

9. The Army should issue written guidance following the format of the DoD Directive that addresses the accommodation of dietary religious practices. Included would be granting separate rations as a method of accommodating dietary religious practices; development of field ration meals that are prepared in vegetable oil; and development of vegetarian field ration meals that use a meat substitute such as soy bean meal, and are prepared in vegetable oil.

10. The Army should issue written guidance that allows for the consideration of religious beliefs as a factor in granting a temporary waiver of immunizations; underscores the potential importance of medical religious practice in any medical treatment plan; and emphasizes the impact of religious

beliefs on the performance of any autopsy.

11. The Deputy Chief of Staff for Personnel should use the Biannual Soldiers' Survey to assist in ascertaining the level of accommodation of religious practices. This would gain data from a broader spectrum than this study.

12. A future Military Study Project should be done at the United States Army War College to study the attitudes of incumbent battalion and brigade commanders toward accommodation of religious practices.

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